

Victims and Witnesses With Developmental Delays/Disabilities

ALLISON TURKEL
SENIOR ATTORNEY/CHIEF OF TRAINING
APRI'S National Center for Prosecution of Child Abuse
703-797-0703
allison.turkel@ndaa.org
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Disabilities

- Physical
- Psychological
- Cognitive
- Communicative
- Combination

- More than 90% of people with developmental disabilities (DD) will experience sexual abuse at some point in their lives.
- 49% will experience 10 or more abusive incidents (Valenti-Hein & Schwartz, 1995). Other studies suggest that 39-68% of girls with DD and 16-30% of boys will be sexually abused before their 18th Birthday.
- Rape likelihood is staggering 15,000-19,000 people with DD are raped each year in the U.S. (Sobsey, 1994).

Maltreatment and disabilities: A population-based epidemiological study. *Child Abuse & Neglect*, 24, 1257-1274.

- Sullivan and Knutson identified 4,503 maltreated children, 1,012 of whom also had an identified disability.
- The overall rate of maltreatment for children without disabilities was 11%.
- For children with disabilities, the overall rate was 31%. They found that children with disabilities were 3.4 times more likely to be neglected, and physically, emotionally, or sexually abused compared with children who do not have disabilities.

- Sullivan, P.M. & Knutson, J.F. (2000).

What We Will Cover

- ★ General Information on Disabilities
- ★ Specific Information on Victimization
- ★ Specific Information on Mental Retardation
- ★ Tips for Investigation
- ★ Tips for Interviewing
- ★ Trial Tactics

Disabilities

Communicative

- Can be speech production problem NOT intellectual/cognitive
 - i.e. Christopher Reeve, Stephen Hawking
- Cognitive –mental process of knowing, including awareness, perception, reasoning, judgment and learning





**People with Disabilities Are
People NOT Disabilities**





Roll the videotape

The Time is Now



Down Syndrome

- Down syndrome occurs in one out of every 733 live births, and more than 350,000 people in the U.S. have this genetic condition

Decreased muscle tone at birth

Separated sutures (joints between the bones of the skull)

- Asymmetrical or odd-shaped skull

- Round head with flat area at the back of the head (occiput)

- Small skull (microcephaly)

- Upward slanting eyes, unusual for ethnic group

- Small mouth with protruding tongue (see tongue problems)

- Broad short hands

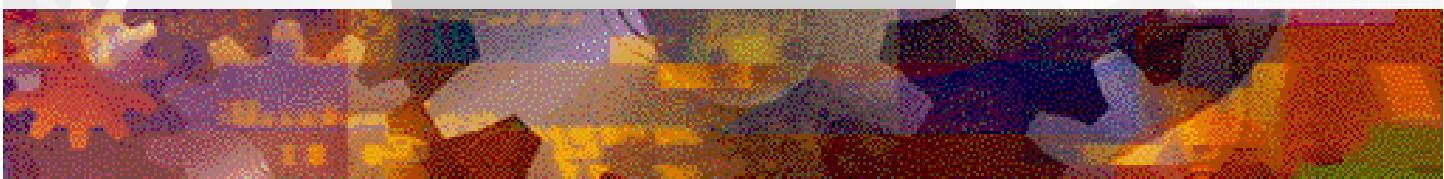
- Single crease on the palm

Retarded growth and development

- Delayed mental and social skills (mental retardation)

- Iris lesion (an abnormality of the colored part of the eye called Brushfield spots)

- Can be assumption that child is more mentally retarded than they may actually be/



Autism

- ★ In general, children with autism have problems in three crucial areas of development — social skills, language and behavior
- ★ The most severe autism is marked by a complete inability to communicate or interact with other people



Autism

- Is a severe, lifelong, pervasive developmental disorder" that occurs in 14 to 16 of every 10,000 live births
- **Asbergers syndrome** is a severe disorder typified by difficulties in social interaction, restricted interests, and unusual patterns of behavior



Adaptive Functioning

- How individuals cope with common life demands and how well they meet the standards of personal independence expected of someone in their particular age group, social, cultural background and community setting. It is influenced by factors such as education, motivation, personality characteristics social and vocational opportunities.



MENTAL RETARDATION

Essential elements of mental retardation:

- * IQ of approximately 70 or below;
- * Ability to be independent in the activities of daily living is not commensurate with chronological age;
- * Onset of the disability is before age 18.

*MENTAL RETARDATION**

- MILD: IQ level 50-55 to approx. 70
 - M.A. 8.3 – 10.9---accounts for 85% of people
- MODERATE: IQ level 35-45 to 50-55
 - M.A. 5.7 – 8.2
- SEVERE: IQ level 20-25 to 35-40
 - M.A. 3.2 – 5.6
- PROFOUND: IQ level below 20-25
 - M.A. 3.1 or less

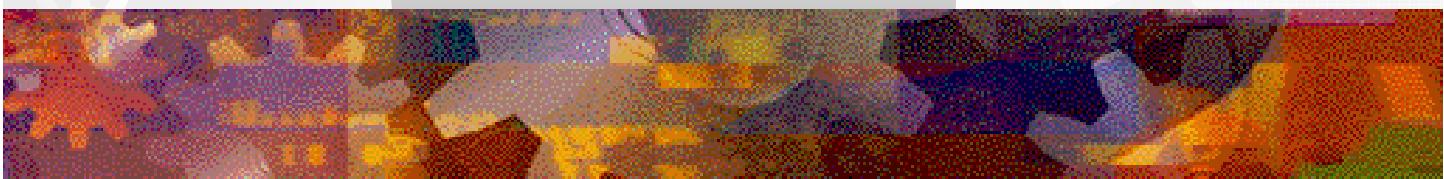
*DSM-IV TR term

SOCIAL DEVELOPMENT

- Short-term memory impairment
- Lower language ability
- Problematic abstract thinking
- Social isolation
- Inappropriate coping strategies
- Over-Accommodation/obedience*
- Desire for social acceptance*

Short Term Memory Impairment

- Does not mean that DD victims cannot remember their victimization
 - They may not remember what they had for breakfast the day they were victimized
 - But, can remember what crimes have been committed against them and by whom if known



CLINICAL ASSESSMENT

- Stanford-Binet Intelligence Scale
- Wechsler Intelligence Scales for Children--Revised
- Kaufman Assessment Battery for Children
- Peabody picture vocabulary IQ test

Atkins v. Virginia 536 US 304, 2002

- An independent evaluation of the issue reveals no reason for the Court to disagree with the legislative consensus. Clinical definitions of mental retardation require not only subaverage intellectual functioning, but also significant limitations in adaptive skills. Mentally retarded persons frequently know the difference between right and wrong and are competent to stand trial, but, by definition, they have diminished capacities to understand and process information, to

Atkins v. Virginia No. 008452. Argued February 20, 2002, Decided June 20, 2002

- communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand others reactions. Their deficiencies do not warrant an exemption from criminal sanctions, but diminish their personal culpability. In light of these deficiencies, the Courts death penalty jurisprudence provides two reasons to agree with the legislative consensus

Personal Preparation

- Acknowledge and Recognize any stereotypes or myths that you may possess
- Get as much information on the individual as you can before any interview
- Assess the need for an interpreter
 - Treat a case with a victim with a disability as you would any other investigation i.e. do crime scene, interview the victim, witnesses etc
- Work in multi-disciplinary teams to minimize trauma to the victim and to enhance your response
 - Anticipate the need for relationship building before an incident
 - Utilize existing resources
 - CAC's etc
- Work with advocates in collaboration for best results for the victims

Roll the Videotape –Personal Profiles

Observe and make assessment of
the individual



FOUNDATIONS OF A PROSECUTION

1. The Forensic Interview
2. Determining Competency to Consent
3. The Medical Examination
4. The Police Investigation
5. Determining I.Q./Mental Age

■ THE FORENSIC INTERVIEW

- Child Abuse Protocol
 - Qualified Interviewer
 - Videotaping
 - Evaluate Competency to Consent
 - Evaluate Competency to Testify
-
- See – “The Abilities of Children with Mental Retardation to Remember Personal Experiences: Implications for Testimony” Michel, Gordon, Ornstein & Simpson. Journal of Clinical Child Psychology. Vol. 29, # 3, September 2000, page 453.

DETERMINING COMPETENCY TO CONSENT

- Victim Inquiry:
- Test routine knowledge
 - Daily life-their body-normal sexual activity
- Specific inquiry
 - Body part identification
 - What is sex?
 - Do men or women have babies?
 - Where do babies come from?
 - How do babies get inside a woman?
 - How can you keep from getting pregnant?

DETERMINING COMPETENCY TO CONSENT

- ★ Percipient Witness Inquiry: Social Worker, parent, teacher, employer, bus driver, house mom, siblings, neighbors
- ★ Education
 - Any formal sex education
 - Normal sexual activity
- ★ Adaptive functioning level
- ★ Legal capacity
 - Competent to live independently
 - Competent to consent to surgery
 - Competence to have bank account
 - To file taxes etc...

Roll the Videotape –Personal Profiles

Observe and make assessment of
the individual



THE MEDICAL EXAMINATION

- * Always necessary
- * Qualified doctor/ SANE
- * Colposcope photos
- * State specific reporting

West Virginia

§ 61-8B-2. Lack of consent

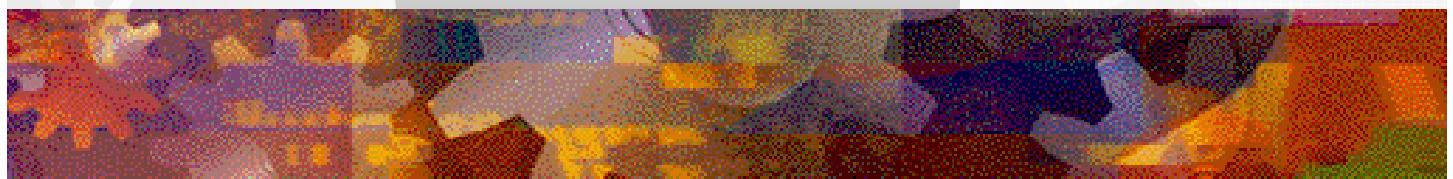
- **(a)** Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without the consent of the victim
- **c)** A person is deemed incapable of consent when such person is:
 - (1)** Less than sixteen years old; or
 - (2)** Mentally defective; or
 - (3)** Mentally incapacitated; or
 - (4)** Physically helpless.

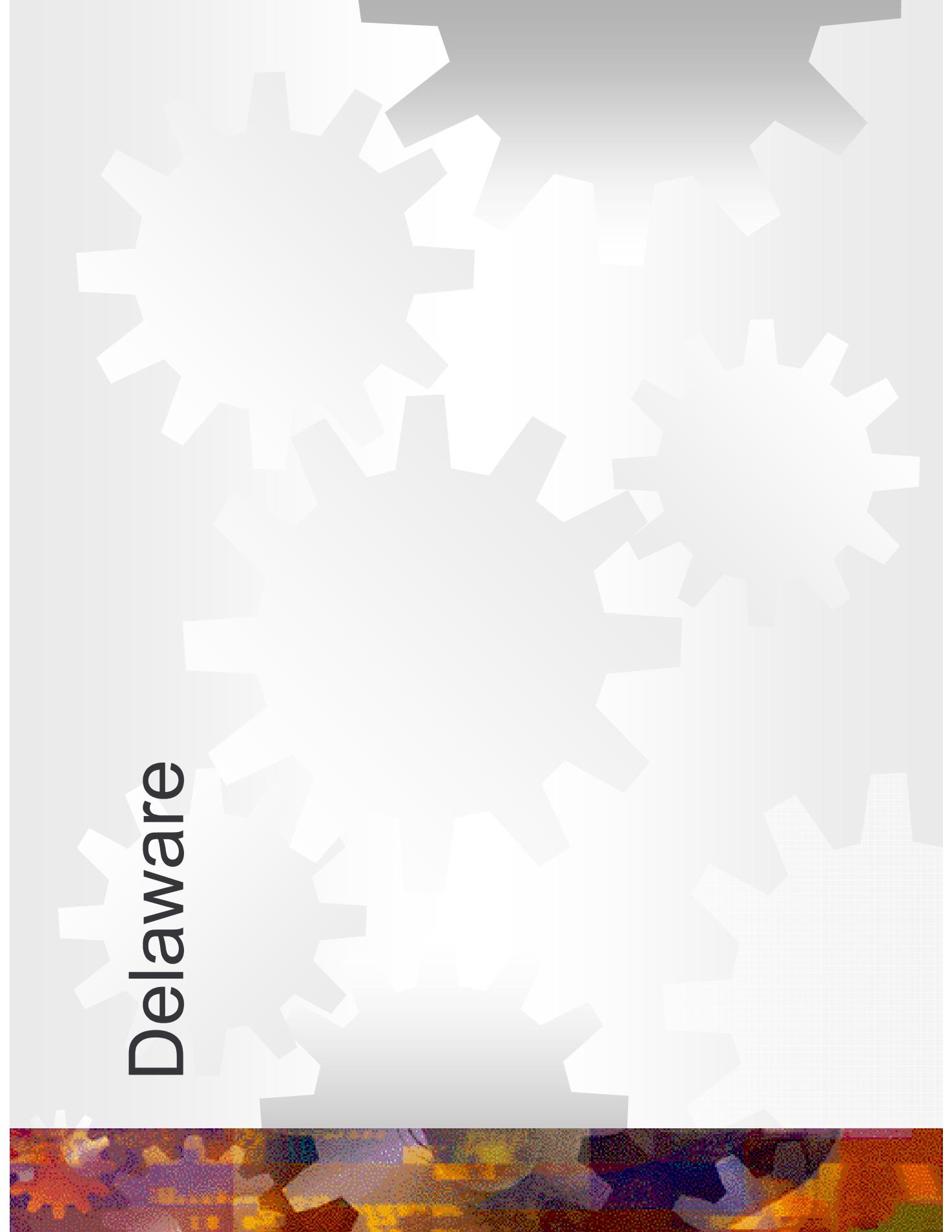
§ 61-8B-5. Sexual assault in the third degree

- (a) A person is guilty of sexual assault in the third degree when:
 - (1) The person engages in sexual intercourse or sexual intrusion with another person who is mentally defective or mentally incapacitated



Delaware





Delaware



THE POLICE INVESTIGATION

GOAL: Establish corroboration

- Interview all persons with relevant knowledge
 - General topics
 - Physical signs
 - Behavioral signs
 - Social indications
- Interview/Interrogate the Suspect and his cohorts
 - Establish knowledge of the victim
 - Look for bragging, photos, videos
- Work in Multi-Disciplinary Teams

Police Investigation

- THERE IS ALWAYS A CRIME SCENE
- Search the victim's statement with team for clues to locate
 - Evidence
 - Location
 - Suspect/additional suspect
 - Additional Victims
- Corroborative information**

Crime Scene

Sexual Abuse

- Clothing of victim
- Clothing of suspect
- Bedding, carpet, towels
- Car mats, seats
- Weapons
- The suspect and victim
FORENSIC EVIDENCE
- Suspects belongings
- Lubricants / condoms
- Sexual Devices
- Pornography
- Photos / videos

Physical Abuse

- Videotape
- Measurements
- Standard collection
- Weapons/ potential
Weapons
- Take photographs
- Remove the
instrumentalities
 - Wall
 - Door
 - Chair
 - Ledge
 - Air-conditioner

Crime Scene (cont'd)

- ★ Collect grooming materials
 - ★ Evidence of neglect
 - ★ Food in fridge/place to sleep/safe environment
 - ★ Any difference of how this person treated compared to others
- ★ Gifts given
- ★ Photographs/videos of victim et al
- ★ Cameras
- ★ Computer discs/hard drives/ e-mails/ letters
- ★ Victims Facilitating Devices** Assistive Devices
 - ★ Who has access to benefits
 - ★ Bed and Bed clothes

Crime Scene (cont'd)

CPS- no warrant necessary

First responders

Cameras

Recording of all interviews

Canvassing neighbors

Talking to Victim's "community"

Neglect

Day in the Life

Has the emergency terminated?

Re-entry permitted when evidence observed but unable to collect due to exigent circumstances

Consent Searches (authority)

Oral- witnessed- non-coercive

Written- form-signed-witnessed

DEMONSTRATIVE EVIDENCE

- * Scene
- * Photographs
- * Medical
- * Charts and Graphs
- * Diagrams
- * Videotaped Interview
- * Power Point Presentation



Interviews

- ★ Collect social history of suspect
 - * Including prior girl/boy friends
 - * Co-workers
 - * Sex partners
- ★ Defense Witnesses/allibi witnesses
 - * Canvass
 - * Day in the life of victim****
 - * Those who can tell any change in victim behavior

THE I.Q. DETERMINATION

- Historical Profile
- School records
- IEP –Individual Educational Profile
 - Every 3 years **EARLY ON!!**
 - Agency resources
- Regional centers
- Adult protective services
- Current Profile
 - Retain expert psychologist
 - Evaluation of victim

EXPERT PSYCHOLOGIST

- Specific experience
- Familiar with particular disability
- Familiar with cultural requirements
- Administer psychological testing

EXPERT PSYCHOLOGIST

* Determine:

- * Adaptive functioning
- * I.Q. level
- * Mental age level
- * Cognitive thinking ability

* Evaluate:

- * Victim as a historian
- * Concrete thinking ability

* Language ability

- * Confabulation
 - * behavioral reaction to memory loss in which the patient fills in the gaps with inappropriate words.

Roll Videotape

The Interview



PROVING THE CASE



PRETRIAL MOTIONS

- * Support Person
- * Postponement
- * Closed Courtroom
- * Courtroom Attire
- * Courtroom Configuration
- * Closed-Circuit Television
- * Anatomical Dolls
- * Speedy Disposition
- * Videotaped Statement
- * Victim Questioning



VICTIM CONSIDERATIONS

1. Competency to Testify
2. Oath Requirements
3. Disqualifying a Witness

COMPETENCY TO TESTIFY

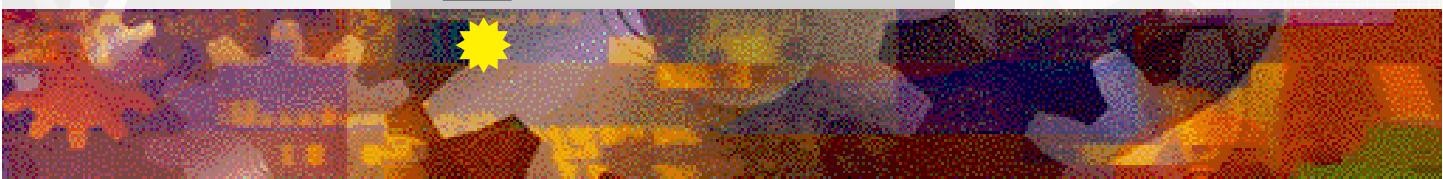
FEDERAL RULES OF EVIDENCE 601

- * Every person is competent to be a witness except as otherwise provided in these rules.

OATH OR AFFIRMATION

FEDERAL RULES OF EVIDENCE 603

* Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.



TRIAL

- 1. Defining the Theme**
- 2. Defining the Victim**
- 3. Voir Dire**
- 4. Opening Statement**
- 5. Witness Testimony**
- 6. Closing Argument**

Jurors' perceptions of adolescent sexual assault victims who have intellectual disabilities

- ★ Children and adolescents with intellectual disabilities are especially likely to be sexually abused. Even so, their claims are not likely to be heard in court, possibly because people assume that jurors will not believe them. We tested this assumption in a mock-trial study in which 160 men and women watched videotaped excerpts from an actual trial. As predicted, when the 16-year-old sexual assault victim was portrayed as "mildly mentally retarded" instead of as "having average intelligence," jurors were more likely to vote guilty and had more confidence in the defendant's guilt; considered the victim to be more credible and the defendant to be less credible as witnesses; and rated the victim as more honest, less capable of fabricating the sexual abuse accusation, and less likely to have fabricated the sexual abuse accusation.

Jurors' perceptions of adolescent sexual assault victims who have intellectual disabilities

- Men and women were affected similarly by the disability manipulation, but women were generally more pro-prosecution in their case judgments and perceptions than were men. Finally, jurors who had more liberal views toward persons with disabilities were more likely than other jurors to make pro-prosecution judgments on measures of guilt. Implications for psychological theory and the law are discussed.



VOIR DIRE

- Standard Sexual Abuse Questions
 - Delayed reporting
 - Inconsistent/recanted disclosure
 - Credibility issues
 - Circumstantial evidence issues
 - Inherent prejudices and biases
 - Explicit content
 - Uncorroborated testimony

ISSUE SPECIFIC VOIR DIRE

Biased or Preconceived Attitudes

- sexually promiscuous
- brought on due to own behavior
- uncomfortable around MR persons
- specific diagnosis affect juror perception

Familiarity with people with MR

Legal Issues

- Consent

- Competency

Credibility

- Equal weight to testimony
- Knowledge of memory ability ...

Victimization

OPENING STATEMENT

- Develop the theme
- Define the facts
- Establish framework for testimony
- Humanize the case
 - Don't overstate case or the victim's ability
 - Prepare jury for victim's demeanor

DEFINING THE THEME

- ★ Outline the Facts
 - Legal facts
 - Emotional facts
 - Story facts
- ★ Determine the Theme
 - secret
 - vulnerability
 - type of person no one would believe
- ★ Negative factors can lend themselves to strong themes

DEFINING THE VICTIM

- Analogize to chronologically aged child
- Dispel antiquated stigmas
- Create sympathy
- Establish credibility

PSYCHOLOGICAL EXPERT

- * Define particular disability
- * Characteristics of disability
- * Vulnerabilities of persons with mental retardation
- * Particulars of examination conducted
- * Current I.Q. level/mental age

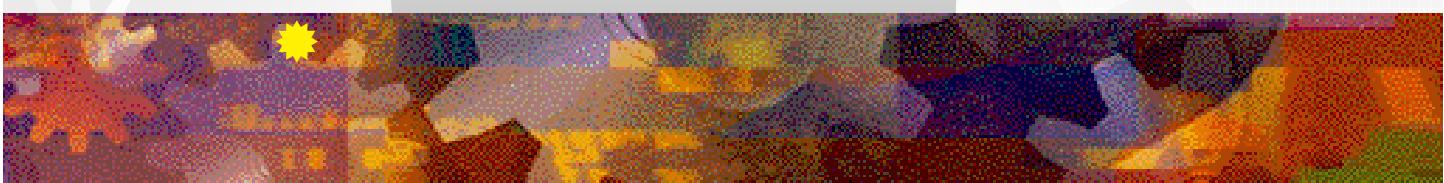
VICTIM

- Establish competency
- Personalize victim
- Examine daily routine
- Establish incompetency to consent
- Detail criminal conduct
- Victim's attachment to defendant

TESTIFYING AT TRIAL

General Linguistic Tips

- Start with easy questions, try to put her at ease
- Short sentences -No compound sentences
- Signal topic changes
- Use victim's words, simple words
- Avoid measurements, distances and time questions
- Literal interpretations*** (mouth example)
- No legal terms
- Avoid pronoun use
- Avoid accusatory questions



VICTIM CONSIDERATIONS

- Preparing for testimony
- Scheduling testimony

CHARACTER AND OTHER WITNESSES

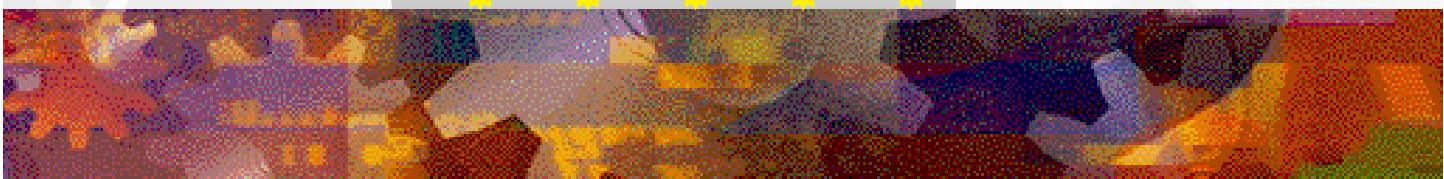
- Character
- Unbiased
- Corroboration
- Other Witnesses
 - Detective/patrol officers
 - Percipient witnesses
 - Other corroborating witnesses

SCHOOL PSYCHOLOGIST

- ★ Explain special education system
- ★ IEP
- ★ Victim's personal history
- ★ Character witness

MEDICAL DOCTOR

- ★ Explain standard examination (sex assault)
- ★ Define victim's physical developmental stage
- ★ Explain positive or normal findings
- ★ Define amount of force required for trauma
- ★ Victim's statements/attitude/comprehension level/demeanor



OPTIONAL EXPERTS

- ★ Child Sexual Abuse Accommodation Syndrome Expert
- ★ Rape Trauma Syndrome Expert
- ★ Post Traumatic Stress Syndrome Expert



CLOSING ARGUMENT

- Write prior to trial--modify throughout
- Reinforce theme
- Define charges
- Enhance victim's credibility/ incapacity to consent can become more obvious after victim's testimony

SUGGESTED READING

www.thearc.org

- American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders(4th ed. -TR) 2000
- American Prosecutors Research Institute,
INVESTIGATION AND PROSECUTION OF CHILD ABUSE (3d ed.).
- National Center for Prosecution of Child Abuse,
FINDING WORDS, Interviewing and Preparing Children for Court (2007).
- Lyon, T.D. & Saywitz, K.J. (1999) Young and Maltreated Children's Competence to Take the Oath. *Applied Developmental Science* , Vol. 3, No. 1, 16-27.
- Developed with material prepared by Laura Rogers